

# EXHIBIT E



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October 17, 2014

**VIA EMAIL**

Kyle J. McGee  
Grant & Eisenhofer P.A.  
123 Justison Street  
Wilmington, DE 19801  
kmcgee@gelaw.com

Re: *In re Google, Inc. Privacy Policy Litigation*  
Case No. 5:12-cv-01382-PSG

Dear Mr. McGee:

This responds to your letter of October 10, 2014. While we appreciate that you now recognize that your claims related to free apps are baseless, and have agreed not to pursue them, that is only part of the issue. It has been more than a month since we wrote to you detailing the falsity of your complaint's claims as regards *both* free and paid claims: in neither case is any personal information transmitted from the user's device to anyone—Google or developers—in the process of purchasing or downloading apps from Google Play, and your complaint's allegations to the contrary are simply false. Those false allegations of battery consumption are also the *only* basis for Article III jurisdiction, and were expressly relied upon by the Court in its decision to assume jurisdiction.

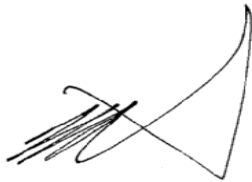
In response, you asked for early, targeted discovery. We have provided that to you, and even a cursory review of that information should have confirmed the facts for you. You also asked for a declaration concerning free applications, and we provided that. And yet still, more than a month later, you are “considering whether to amend [your] Complaint.”

To make things even clearer, enclosed find a more detailed declaration, covering both free and paid applications. It contains nothing you do not already know, and will form the basis of a Rule 11 or summary judgment motion in the event you persist in leaving your Complaint on file. Please confirm that you will either dismiss your Complaint outright or amend it to remove the multiple false statements we have repeatedly identified to you.

A verification of our interrogatory responses is also attached.

Kyle J. McGee  
October 17, 2014  
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Very truly yours,

A handwritten signature in black ink, appearing to read "Michael H. Page". The signature is stylized with a large, sweeping loop on the right side and several horizontal strokes on the left.

Michael H. Page

MHP:jp

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9  
10 IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 Case No. 5:12-cv-01382-PSG

13 **CONSOLIDATED CLASS ACTION**

14 IN RE GOOGLE, INC. PRIVACY POLICY  
15 LITIGATION

**DECLARATION OF FICUS KIRKPATRICK  
IN SUPPORT OF MOTION FOR RULE 11  
SANCTIONS**

16 Ctrm: 5 - 4th Floor  
17 Judge: Honorable Paul Singh Grewal

1 I, Ficus Kirkpatrick, declare as follows:

2 1. I am the Head of Engineering for the Google Play Store at Google Inc. The factual  
3 assertions made herein are made of my personal knowledge and, if called upon to do so, I could and  
4 would testify competently thereto.

5 2. I am familiar with the operation of both Google Play and Google Wallet, and have  
6 reviewed the allegations contained in the Consolidated Second Amended Complaint ("CSAC") in the  
7 above-captioned matter. In particular, I have reviewed the allegation in that document that, each time an  
8 Android user downloads an App (whether free or purchased) from Google Play, information concerning  
9 that user (such as name, username, zip code, and the like, referred to in the CSAC and herein as  
10 "personal information") is automatically transmitted from that user's Android device to the developer of  
11 that App, and that in the process the device's battery charge is depleted. Those allegations are false.

12 3. In order to understand the process by which Apps are downloaded from Google Play, it is  
13 important to distinguish between paid and free Apps, as the process differs between the two.

14 4. In order to download a free App from Google Play, an Android user opens the Google  
15 Play App on her Android device, and can then search from among the thousands of Apps available there.  
16 That search process is conducted via a series of communications between the user's device and the  
17 Google servers and software that comprise Google Play. Once the user selects an App, the computer  
18 code that constitutes that App is transmitted (or "downloaded") from Google's servers to the user's  
19 device, where after an installation process is complete, the App is ready for use.

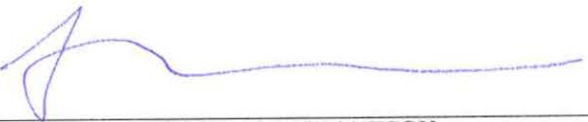
20 5. At no point in the process of downloading and installing a free App does the user's device  
21 communicate with the developer of the App or any server operated by that developer. Google does not  
22 provide the developer of a free App with any personal information concerning users who have  
23 downloaded free Apps. No Google Wallet account is required in order to download free Apps, and  
24 anyone with a basic Google account (such as a Gmail account) can download free Apps without  
25 providing any additional personal information.

26 6. The process for purchasing an App is slightly different. Just as with free Apps, the user's  
27 device communicates directly with Google's servers only, not with the developer or its equipment.  
28 Before a user can purchase a paid App, however, she must have a Google Wallet account in addition to a

1 basic Google account. Google Wallet is Google's payment mechanism for purchases from Google Play  
 2 and other services and merchants. The personal information associated with a user's Google Wallet  
 3 account is initially provided by the user to Google (either by means of the user's Android device or via  
 4 the internet) and is stored on Google's servers. That personal information varies depending on the user  
 5 and her purchase history. A user can open a Google Wallet account without providing credit card or  
 6 other payment information, but in order to make a purchase will later have to either establish a credit  
 7 balance or provide credit card information, just as in any online or telephonic credit card purchase.  
 8 Similarly, a user must provide country and zip code (or similar information in other countries) in order  
 9 for the merchant to determine applicable taxes. Similarly, if a user uses Google Wallet to purchase  
 10 physical goods, she will need to provide address information for shipment. Regardless of the information  
 11 involved, it is transmitted from the user to Google, and stored on Google's secure servers.

12 7. Google Wallet (and its predecessor, Google Checkout) makes certain information  
 13 available to merchants concerning customers who have purchased that merchant's Apps. That  
 14 information has varied over time, and at one time included names, usernames, and "coarse" addresses  
 15 (i.e. country and zip code or local equivalent). That information, however, was and is made available to  
 16 merchants only in response to the merchant's inquiry: a merchant can log into its Google Wallet account  
 17 and retrieve certain information concerning its sales to its customers via its Wallet Dashboard. At all  
 18 relevant times, that process has entailed a request from the merchant, directed to Google's servers, and a  
 19 response to the merchant, sent from Google's servers. At no time has that process entailed the  
 20 transmission of personal information, or any data whatsoever, from a user's Android device to the  
 21 merchant.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
 23 true and accurate to the best of my knowledge. Executed on September 30, 2014 at Mountain View,  
 24 California.

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 27 FICUS KIRKPATRICK  
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